

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RENE C. COLE

Claimant

VS.

LEARJET, INC.

Respondent

Self-Insured

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Docket No. 210,164

ORDER

Claimant requests review of the preliminary hearing Order entered by Administrative Law Judge John D. Clark dated March 19, 1996.

ISSUES

The Administrative Law Judge denied claimant's request for benefits. The Judge found claimant did not sustain his burden of proof that he sustained a work-related injury.

The sole issue now before the Appeals Board is whether claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board for purposes of preliminary hearing finds as follows:

The preliminary hearing Order of the Administrative Law Judge should be affirmed.

The Appeals Board finds the evidence presented to date fails to establish that claimant sustained personal injury by accident arising out of and in the course of his employment with the respondent or that his work aggravated his preexisting condition of torticollis to the extent it has caused either additional disability or impairment or the need for additional medical treatment over and above that required for the preexisting condition. It is uncontroverted that claimant developed torticollis, a condition where the cervical

muscles are contracted in spasm causing claimant's head to uncontrollably turn to the right, as the result of a neck injury sustained while moving furniture at home in September 1994.

Claimant contends his work as an inventory planner, which requires his use of a computer, has aggravated his condition of torticollis.

The medical evidence presented can be summarized as follows:

"Mr. Cole suffers from torticollis which certainly could be aggravated by his computer activities." (From letter of Burtram J. Odenheimer, M.D., dated March 11, 1996.)

"It is my opinion that Rene's current medical situation is directly related to his work. Because of the positioning in which he has to have his head and the long periods of time he sits in this particular position, I believe that this is aggravating his current problem. The help that he might get from his job, understanding his current situation, would be greatly appreciated." (From letter of Glen R. Patton, D.O., dated March 4, 1996.)

"Mr. Cole has spasmodic torticollis with uncontrollable head turning to the right. This has resulted in some neck pain. His condition and the neck pain can be aggravated when the patient is trying to maintain his head in a certain posture, specifically, while trying to look straight forward." (From the letter of Paul V. Babikian, M.D., dated March 4, 1996.)

The Appeals Board notes that claimant attached a letter from William C. Koller, M.D., Ph.D., to his brief to the Appeals Board. Although the letter contains information which is relevant to this proceeding and which might otherwise persuade the trier of fact, it may not be considered on this review because it was not a part of the evidentiary record before the Administrative Law Judge. See K.S.A. 44-555c which limits Appeals Board review to those issues and based upon the evidence presented to the administrative law judge.

The Administrative Law Judge found that claimant had failed to establish a work-related injury. Based upon the evidentiary record before the Administrative Law Judge the Appeals Board agrees. It is true one is entitled to be compensated for the additional injury or disability which results when a work-related accident aggravates a preexisting disease or impairment. However, the evidence presented fails to establish that claimant has sustained additional injury or disability as a result of his job as an inventory planner or that his employment has aggravated the torticollis to the extent additional medical care is needed or recommended over and above that which would otherwise be provided for this preexisting condition.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge John D. Clark dated March 19, 1996 should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David H. Farris, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director